

SMALL BUSINESS INNOVATION RESEARCH PROGRAM
REAUTHORIZATION ACT OF 1999

SEPTEMBER 23, 1999.—Ordered to be printed

Mr. TALENT, from the Committee on Small Business,
submitted the following

R E P O R T

[To accompany H.R. 2392]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 2392) to amend the Small Business Act to extend the authorization for the Small Business Innovation Research Program, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill do pass.

The amendment is as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Business Innovation Research Program Reauthorization Act of 1999”.

SEC. 2. FINDINGS.

Congress finds that—

(1) the small business innovation research program established under the Small Business Innovation Development Act of 1982 and reauthorized by the Small Business Research and Development Enhancement Act of 1992 (in this section referred to as the “SBIR program”) is highly successful in involving small businesses in federally funded research and development;

(2) the SBIR program made the cost-effective and unique research and development capabilities possessed by the small businesses of this Nation available to Federal agencies and departments;

(3) the innovative goods and services developed by small businesses that participated in the SBIR program have produced innovations of critical importance in a wide variety of high-technology fields, including biology, medicine, education, and defense;

(4) the SBIR program is a catalyst in the promotion of research and development, the commercialization of innovative technology, the development of new products and services, and the continued excellence of this Nation’s high-technology industries; and

(5) the continuation of the SBIR program will provide expanded opportunities for one of the Nation’s vital resources, its small businesses, will foster invention,

research, and technology, will create jobs, and will increase this Nation's competitiveness in international markets.

SEC. 3. EXTENSION OF SBIR PROGRAM.

Section 9(m) of the Small Business Act (15 U.S.C. 638(m)) is amended to read as follows:

"(m) **TERMINATION.**—The authorization to carry out the Small Business Innovation Research Program established under this section shall terminate on September 30, 2007."

SEC. 4. ANNUAL REPORT.

Section 9(b)(7) of the Small Business Act (15 U.S.C. 638(b)(7)) is amended by striking "and the Committee on Small Business of the House of Representatives" and inserting ", and to the Committee on Science and the Committee on Small Business of the House of Representatives,".

SEC. 5. THIRD PHASE ASSISTANCE.

Section 9(e)(4)(C)(i) of the Small Business Act (15 U.S.C. 638(e)(4)(C)(i)) is amended by striking "; and" and inserting "; or".

SEC. 6. RIGHTS TO DATA.

Section 9(j) of the Small Business Act (15 U.S.C. 638(j)) is amended by adding at the end the following:

"(3) **ADDITIONAL MODIFICATIONS.**—Not later than 90 days after the enactment of the Small Business Innovation Research Program Reauthorization Act of 1999, the Administrator shall modify the policy directives issued pursuant to this subsection to clarify that the rights provided for under subparagraph (2)(A) of this subsection apply to all Federal funding awards falling under the definitions of 'first phase', 'second phase', or 'third phase', as specified in subsection (e)(4)."

SEC. 7. REPORT ON PROGRAMS FOR ANNUAL PERFORMANCE PLAN.

Section 9(g) of the Small Business Act (15 U.S.C. 638(g)) is amended—

- (1) in paragraph (7), by striking "and" at the end;
- (2) in paragraph (8), by striking the period at the end and inserting "; and";
- and
- (3) by adding at the end the following:

"(9) include, as part of its annual performance plan as required by subsections (a) and (b) of section 1115 of title 31, United States Code, a section on its SBIR program, and shall submit such section to the Committee on Small Business of the Senate, and the Committee on Science and the Committee on Small Business of the House of Representatives."

PURPOSE

The purpose of H.R. 2392 is to reauthorize the Small Business Innovation and Research program in section 9 of the Small Business Act and to make various technical corrections to that section of the Act. H.R. 2392 has six provisions, not including the short title. Section two of H.R. 2392 expresses the sense of the Congress regarding the success of the SBIR program. Section three reauthorizes the SBIR program for seven years. Section four includes the Committee on Science in certain reporting requirements regarding the SBIR program. Section five clarifies the funding requirements for third phase participation in the SBIR program. Section six requires the SBA to clarify, through policy directives, the rights in technical data that are granted to SBIR awardees, and finally Section seven requires that agencies participating in SBIR include the program in their annual performance plans.

NEED FOR LEGISLATION

The authorization for the SBIR program will expire on October 1, 2000 absent legislative action. Rather than wait until the last year the Committee has decided to reauthorize this program now.

There are two reasons for this early action: (1) The Committee has found overwhelming support for the program in both houses of Congress, as well as the executive branch and (2) the Committee believes that this early action will allow program managers to plan future years' activities in the SBIR program without concern over the status of the authorization. It is particularly for the second reason that the Committee chooses to reauthorize the SBIR program for seven, rather than a lesser period of time.

COMMITTEE ACTION

GOVERNMENT PROGRAMS SUBCOMMITTEE HEARING

On April 22, 1998, the Subcommittee on Government Programs and Oversight of the Committee on Small Business held a hearing to review the success of SBIR—a federally-funded research and development small business set-aside program established in 1982. SBIR was scheduled to expire on October 1, 1988. However, Congress initially extended the program to September 30, 1993. The reasons given for extending SBIR were that the program creates new jobs, increases productivity and economic growth, helps combat inflation, and stimulates exports. In extending the program, Congress acknowledged that small businesses had not been receiving a fair share of Federal research and development dollars. In 1992, Congress enacted the Small Business Research and Development Enhancement Act which again extended SBIR, this time through October 1, 2000. President Bush signed the bill into law on October 28, 1992.

The statute that established the program requires that each Federal agency with an extramural budget for research and development in excess of \$100 million set-aside a percentage, presently 2.5 percent, of that budget for projects awarded to small businesses. Unlike the Small Business Technology Transfer Program (STTR) with which it is often confused, SBIR does not require, but permits a cooperative venture between a for-profit small business and researchers at a university, Federal laboratory, or a nonprofit research institution. From the inception of the SBIR program through the end of the FY 1996, in response to 187 solicitations, 261,421 proposals were received and 41,351 contracts worth \$6.5 billion were awarded according to the Small Business Administration (SBA).

SUMMARY OF HEARING

The hearing had two panels, the first of which included: Mr. Douglas P. Taylor, President, Taylor Devices, Inc.; Ms. Alisa Rogers, Vice President, SELF Corporation; Dr. Charles Kojabashian, President, Foster-Miller, Inc.; Dr. Jeanne Dietz-Band, Oncor, Inc.; Dr. Catherine A. Ricks, Vice President, Embrex Inc.; and Dr. Carl J. Johnson, Chairman, II-IV Incorporated. There was consensus that SBIR was a successful program for the performance of important research leading in many instances to the development of viable products. For some small companies, SBIR projects have been a ready source of capital with relatively low financial risk to the participants. Examples were given of technological advances that benefited the Federal agency sponsoring the project as well as the

nation as a whole. The view was expressed that it was not always possible in advance to determine with certainty the most beneficial commercial application of research, but that the pursuit of new ideas does contribute to this nations body of scientific knowledge and enhances our international competitiveness.

The second panel included: Ms. Susan D. Kladiva, Associate Director, U.S. General Accounting Office (GAO); Ms. Susan E. Haley, Deputy Director, Department of Defense; Mr. Kesh Narayanan, National Science Foundation; Dr. Wendy Baldwin, Deputy Director, National Institutes of Health; Dr. Charles F. Cleland, Director, Department of Agriculture; and Mr. Daniel O. Hill, Assistant Administrator, U.S. Small Business Administration. GAO reported that the program appeared to be targeting the participation of women-owned small businesses and economically disadvantaged small businesses and to be including critical technologies. One agency stated that it employed rigorous peer review in selecting program participants and that the reviewers were drawn primarily from universities and government laboratories. One witness was of the view that SBIR ensures that the best and brightest researchers in the nation will be a part of the Federal research and development efforts that benefit our national defense, build safer highways and airports and contribute to our public health and safety. There was consensus that the program was a success and should be continued.

CONSIDERATION OF H.R. 2392

At 9:00 a.m. on June 30, 1999, the Committee on Small Business met to mark up and report H.R. 2392. The Chairman declared the bill open for amendment by title, and the first action was consideration of an amendment offered by Chairman Talent. The amendment shifted the GPRA reporting requirement for SBIR to make it a section of the SBIR portion of the Small Business Act rather than having the provision regarding the SBIR program be included in the STTR program authorizing language. The amendment was accepted by an unanimous voice vote.

The Chairman then moved that the bill be reported, and at 9:15 a.m., by unanimous voice vote, a quorum being present, the Committee passed H.R. 2392, as amended, and ordered it reported.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Designates the bill as the "Small Business Innovation Research Program Reauthorization Act of 1999".

Section 2. Findings

This section describes Congressional findings regarding the value and effectiveness of the Small Business Innovation and Research program.

Section 3. Extension of SBIR Program

This section extends the authorization for the SBIR program for seven years, through September 30, 2007.

Section 4. Annual report

This section requires that the annual report on the SBIR program submitted by all federal agencies also be sent to the Committee on Science of the House of Representatives.

Section 5. Third phase assistance

This section clarifies that the required funding for a successful Phase Three award may be either non-SBIR federal funding, federal procurement funding, private sector funding or any combination thereof. Currently, the statute is being misconstrued by some agencies to require funding from more than one non-SBIR source, which was not the intent of Congress. The Committee also wishes to clarify that the small business size restrictions of the SBIR program do not apply to Phase Three where no Phase One or Phase Two funds are utilized.

Section 6. Rights to data

This section requires the Small Business Administration to issue a policy directive to all agencies participating in the SBIR clarifying the rights in technical data that are granted to SBIR awardees. The Committee expects the SBA to clarify that awardees are granted rights in data for four years following the completion of each stage of the SBIR process. In other words, although rights in data for a Phase One awardee extend for four years from the date of the award, that term is extended by a succeeding Phase Two or Phase Three award.

Section 7. Report on programs for annual performance plan

This section requires that agencies participating in the SBIR program include their SBIR efforts as a separate part of their annual performance plan required under the Government Performance and Results Act (31 U.S.C. 1115 (a) and (b)).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 2392—Small Business Innovation Research Program Reauthorization Act of 1999

Summary: The Small Business Innovation Research (SBIR) program requires federal agencies with extramural research expenditures of more than \$100 million to set aside 2.5 percent of their research and development (R&D) budgets for small business. (In general, extramural expenditures as defined in 15 U.S.C. 638(e), are expenditures for activities not performed by agency employees.) H.R. 2392 would extend the expiration date of the SBIR program from 2000 to 2007 and would require the affected federal agencies to include activities related to the SBIR program in their annual performance plans. Finally, the bill would make technical and clarifying amendments to the program's authorization.

Assuming appropriation of the amounts necessary to maintain the SBIR programs at the level provided in 1999, CBO estimates that implementing the bill would cost \$35 million over the 2001–2004 period. Alternatively, if appropriations are increased to keep pace with anticipated inflation, CBO estimates that extending the SBIR program would cost \$42 million over the 2001–2004 period.

H.R. 2392 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2392 is shown in the following table. The costs of this legislation fall within several budget functions.

SPENDING SUBJECT TO APPROPRIATION

	By fiscal year, in millions of dollars					
	1999	2000	2001	2002	2003	2004
WITHOUT ADJUSTMENT FOR INFLATION						
SBIR Spending Under Current Law:						
Estimated Authorization Level ^{1 2}	9	9	0	0	0	0
Estimated Outlays	9	9	1	0	0	0
Proposed Changes:						
Estimated Authorization Level	0	0	9	9	9	9
Estimated Outlays	0	0	8	9	9	9
SBIR Spending Under H.R. 2392:						
Estimated Authorization Level ^{1 2}	9	9	9	9	9	9
Estimated Outlays	9	9	9	9	9	9
WITH ADJUSTMENT FOR INFLATION						
SBIR Spending Under Current Law:						
Estimated Authorization Level ^{1 3}	9	10	0	0	0	0
Estimated Outlays	9	10	1	0	0	0
Proposed Changes:						
Estimated Authorization Level	0	0	10	11	11	12
Estimated Outlays	0	0	9	11	11	11
SBIR Spending Under H.R. 2392:						
Estimated Authorization Level ^{1 3}	9	10	10	11	11	12
Estimated Outlays	9	10	10	11	11	11

¹ The 1999 level is the amount appropriated for that year.

² The 2000 level is set identical to the 1999 appropriation.

³ The 2000 level is CBO's baseline projection, which includes an adjustment for inflation.

Basis of estimate: The Small Business Administration (SBA) currently has a small office devoted to the SBIR program. Other agencies maintaining at least a part-time SBIR staff include the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, and Transportation, as well as the Environmental Protection Agency, the National Aeronautics and Space Administration, and the National Science Foundation. The SBIR office structures of these agencies vary. Some agencies have a small full-time staff devoted to the SBIR program, with other staff assisting as part of their other duties; some have several employees working part-time on the program. Program costs consist primarily of personnel, overhead, printing, mailing, and in the case of some agencies, contractors' costs.

H.R. 4400 would extend the SBIR program through 2007. Based on information from SBA and the other affected agencies, CBO estimates that implementing the SBIR program would cost \$9 million a year in 1999 dollars—\$1 million for SBA and \$8 million for the other agencies.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 2392 contains no intergovernmental or private-sector mandates as defined in

UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Mark Hadley.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

COMMITTEE ESTIMATE OF COSTS

Pursuant to the Congressional Budget Act of 1974, the Committee estimates that the amendments to the Small Business Act contained in H.R. 2392 will not increase discretionary spending, if fully funded. This concurs with the CBO estimate. The SBIR program operates as a percentage of the extramural research budget of affected agencies and is dependent on these pre-existing appropriated amounts.

Furthermore, pursuant to clause 3(d)(2)(A) of rule XIII of the Rules of the House of Representatives, the Committee estimates that implementation of H.R. 2392 will not significantly increase other administrative costs. The Committee believes that CBO's estimate of \$9 million in annual administrative costs is accurate.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON SCIENCE,
Washington, DC, September 21, 1999.

Hon. JAMES M. TALENT,
Chairman, Committee on Small Business, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to you concerning H.R. 2392, the Small Business Innovation Research Program Reauthorization Act of 1999, which has been referred to the Committee on Science. The bill seeks—among other things—to reauthorize the Small Business Innovation Research (SBIR) program through fiscal year 2007. Over the years, the Science Committee has participated in the reauthorization of the SBIR program and its cousin program, the Small Business Technology Transfer Program (STTR). During that process, the Science and Small Business Committees have worked together to improve these programs through the legislative process.

We have continued that tradition with H.R. 2392. The reported version of H.R. 2392, contains language which you incorporated at the request of this Committee. However, there remain other concerns that could not be addressed at the time of your markup. You have therefore agreed to include in H.R. 2392, an amendment which speaks to the concerns of the Science Committee. The amendment includes sections on: output and outcome data; award amount and duration; second phase commercial plans; and a National Research Council report.

Because these provisions will be included, and because you wish to expedite the consideration of H.R. 2392, I will discharge it from the Committee. This discharge in no way abrogates the Science Committee's jurisdiction or purview over the SBIR program, under the rules of the House of Representatives. If the passage of H.R. 2392 results in the convening of a conference with the Senate on

this or similar issues, I ask that you will support the Committee on Science in its request to be given conferees on the bill.

Sincerely,

F. JAMES SENSENBRENNER, Jr.,
Chairman.

OVERSIGHT FINDINGS

In accordance with clause 4(c)(2) of rule X of the Rules of the House of Representatives, the Committee states that no oversight findings or recommendations have been made by the Committee on Government Reform with respect to the subject matter contained in H.R. 2392.

In accordance with clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 2392 are incorporated into the descriptive portions of this report.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8, clause 18, of the Constitution of the United States.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 9 OF THE SMALL BUSINESS ACT

SEC. 9. (a) * * *

(b) It shall be the duty of the Administration, and it is hereby empowered—

(1) * * *

* * * * *

(7) to report not less than annually to the Committee on Small Business of the Senate [and the Committee on Small Business of the House of Representatives], *and to the Committee on Science and the Committee on Small Business of the House of Representatives*, on the SBIR and STTR programs of the Federal agencies and the Administration's information and monitoring efforts related to the SBIR and STTR programs.

* * * * *

(e) For the purpose of this section—

(1) * * *

* * * * *

(4) the term "Small Business Innovation Research Program" or "SBIR" means a program under which a portion of a Federal agency's research or research and development effort is re-

served for award to small business concerns through a uniform process having—

(A) * * *

* * * * *

(C) where appropriate, a third phase—

(i) in which commercial applications of SBIR-funded research or research and development are funded by non-Federal sources of capital or, for products or services intended for use by the Federal Government, by follow-on non-SBIR Federal funding awards; **[and]** or

* * * * *

(g) Each Federal agency required by subsection (f) to establish a small business innovation research program shall, in accordance with this Act and regulations issued hereunder—

(1) * * *

* * * * *

(7) make payments to recipients of SBIR funding agreements on the basis of progress toward or completion of the funding agreement requirements and, in all cases, make payment to recipients under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements; **[and]**

(8) make an annual report on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy~~...~~; and

(9) *include, as part of its annual performance plan as required by subsections (a) and (b) of section 1115 of title 31, United States Code, a section on its SBIR program, and shall submit such section to the Committee on Small Business of the Senate, and the Committee on Science and the Committee on Small Business of the House of Representatives.*

* * * * *

(j)(1) * * *

* * * * *

(3) *ADDITIONAL MODIFICATIONS.—Not later than 90 days after the enactment of the Small Business Innovation Research Program Reauthorization Act of 1999, the Administrator shall modify the policy directives issued pursuant to this subsection to clarify that the rights provided for under subparagraph (2)(A) of this subsection apply to all Federal funding awards falling under the definitions of “first phase”, “second phase”, or “third phase”, as specified in subsection (e)(4).*

* * * * *

[(m) TERMINATION.—The authorization to carry out the Small Business Innovation Research Program under this section shall terminate on October 1, 2000.]

(m) *TERMINATION.*—*The authorization to carry out the Small Business Innovation Research Program established under this section shall terminate on September 30, 2007.*

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